

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3940 of 1998

to

First Appeal No.3953 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

SPECIAL LAND ACQUISITION OFFICER

Versus

SHYAMABHAI MITTHABHAI ROHIT DECD.THR'DEIRS SHANTABEN & 4

Appearance:

Mr. P.G. Desai, Government Pleader for the appellants in First Appeal Nos.3940/98 to 3945/98

Mr. U.A. Trivedi, AGP, for the appellants in First Appeal Nos.3946/98 to 3949/98

Mr. B.D. Desai,AGP, for the appellants in First Appeal Nos.3950/98 to 3953/98

Mr. G.M. Amin for the claimants in all the appeals.

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 17/12/98

COMMON ORAL JUDGMENT (Per: Panchal, J.)

1. Admitted. Mr. G.M. Amin, learned counsel, who appears on caveat, waives service on behalf of the claimants in all these appeals. At the joint request of the learned counsel appearing for the parties, the appeals are taken up for final hearing today.

2. All these appeals, which have been filed under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, are directed against common judgment and award dated February 9, 1998, rendered by the learned Second Extra Assistant Judge, Kheda at Nadiad, in Land Reference Case No. 122 of 1989 to Land Reference Case No.135 of 1989 and, therefore, we propose to dispose of all these appeals by this common judgment.

3. The Executive Engineer, Express Way, Division-I, Ahmedabad, had proposed to the State Government to acquire agricultural lands of village Kuna, Taluka Mahemdabad, for the purpose of Ahmedabad-Vadodara Express Way. After due verification and inspection, the State Government was satisfied that the agricultural lands situated at village Kuna were likely to be needed for the said public purpose. Accordingly, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued which was published in the official gazette on August 21, 1986. The land owners whose lands were proposed to be acquired were served with notices under Section 4 of the Act. The land owners had filed objection against the proposed acquisition and after considering their objections, the Special Land Acquisition Officer, Express Way, Kheda, had submitted report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands specified in the notification which was issued under Section 4(1) of the Act were needed for public purpose of Ahmedabad-Vadodara Express Way. Therefore, declaration under Section 6 of the Act was made which was also published in the Government Gazette in due course. Interested persons were thereafter served with notice under Section 9 of the Act for determination of compensation. Having regard to the materials placed

before him, the Special Land Acquisition Officer offered compensation at the rate of Rs.180/- per Are by award dated February 9, 1987. The claimants were dissatisfied with the award and did not accept the same. They made written applications to the Special Land Acquisition Officer requiring him to refer the matters to the Court for the purpose of determination of compensation. Accordingly, references were made to the District Court, Kheda, at Nadiad, which were numbered as Land Reference Case No.126 of 1989 to Land Reference Case No.135 of 1989. In the reference applications, the claimants pleaded that, having regard to fertility and potentiality of the lands acquired, offer of compensation made by the Special Land Acquisition Officer should be treated as inadequate and they should be awarded compensation at the rate of Rs.1500/- per Are. The present appellants had filed written statement and contested the reference applications. In reply, it was, inter alia, claimed that offer of compensation made by the Special Land Acquisition Officer was just and, in view of fertility and income of crop raised on the lands acquired, the reference applications should be dismissed.

4. Upon rival contentions of the parties, necessary issues for determination of compensation were framed by the Reference Court at Exh.10. On behalf of the claimants, witness, Shajjibhai Mithabhai, was examined at Exh.23. The witness for the claimants stated about fertility and potentiality of the lands acquired. He claimed that the claimants were taking three crops in a year and were earning Rs.25,000/- per bigha as net profit. He also produced previous judgment of the Reference Court in Land Acquisition Reference No.440 of 1990 at Exh.19, which indicated that the Reference Court had awarded market value of agricultural lands situated at village Mankva at the rate of Rs.1500/- per Are as on August 14, 1986, which was the date of publication of notification under Section 4(1) of the Act in the said case. The witness also produced certified copy of judgment rendered by the High Court in First Appeal No.3048 of 1995 which was directed against the award of the Reference Court in Land Reference Case No.440 of 1990 and, by which, the award made by the Reference Court was upheld. A certified copy of map describing boundaries of village Kuna was also produced by the witness at Exh.22. No evidence either oral or documentary was led by the present appellants. Having regard to the evidence of witness, Shajjibhai Mithabhai, the Reference Court deduced that, though earlier award furnished guidance for the purpose of determining market value of the lands acquired in the present case, appropriate deduction was

required to be made, as there was no facility for canal for the acquired lands, and the population as well as development of village Kuna was less in comparison to village Mankva. The Reference Court felt that interest of justice would be served if 10% was deducted from the market value of the lands determined in the case of village Mankva. Accordingly, the Reference Court has awarded compensation to the claimants at the rate of Rs.1355/- per Are by the impugned common award, giving rise to the present appeals.

5. Mr. P.G. Desai, learned Government Pleader, assisted by Mr. U.A. Trivedi, and Mr. B.D. Desai, learned Assistant Government Pleaders, submitted that the previous award of the Reference Court should not have been treated as representing the true and correct market value of the lands acquired in the present case and, therefore, the impugned common award should be set aside. The learned Government Pleader vehemently urged that no cogent and reliable evidence was led by the claimants to establish that the lands, which were subject matter of the previous award, were similar in each and every respect to the lands acquired in the present case and, therefore, the common award, which is erroneous in law, should be set aside. What was highlighted by the learned Government Counsel was that the evidence proved that there was no facility of canal so far as the acquired lands were concerned, whereas village Mankva was having all the facilities and, therefore, the award produced at Exh.19 should not have been relied upon by the Reference Court for the purpose of ascertaining the market value of the lands acquired in the present case. It was also claimed that village Mankva is a fully developed village having all the facilities and, therefore, the award rendered in respect of the lands situated at village Mankva could not have been made basis for the purpose of ascertaining the market value of the lands acquired in the present case.

6. Mr. G.M. Amin, learned counsel for the claimants, claimed that Exh.22, which is map showing boundaries of village Kuna establishes that boundaries of village Kuna and village Mankva are common as a result it cannot be said that any error was committed by the Reference Court in placing reliance on the previous award rendered in Land Acquisition Reference Case No.440 of 1990. The learned counsel for the claimants emphasized that the agricultural lands of village Mankva were acquired for the purpose of Ahmedabad-Vadodara Express Way, i.e. the purpose for which notification under Section 4(1) of the Act was published in the present

case, and, as the Express Way is on the southern side of the acquired lands, it cannot be said that determination of compensation is either excessive or exorbitant in any manner. What was highlighted was that the Reference Court having noticed certain features in respect of the acquired lands had made proper deduction from the market value of the lands, as indicated in Exh.15, and, therefore, the appeals should be dismissed.

7. In our view, there is no substance in any of the contentions urged on behalf of the appellants and the appeals cannot be accepted. We have heard learned counsel for the parties at length and taken into consideration the documents which were produced by them for our perusal. The evidence of witness, Shajjibhai Mithabhai, recorded at Exh.23, establishes that the acquired lands were irrigated lands. The fact that the acquired lands were irrigated lands is not disputed by the appellants. In fact, it is also mentioned in the award of the Land Acquisition Officer that the lands acquired were irrigated lands. The statement made by the witness for the claimants that all the claimants were taking three crops in a year and were roughly earning Rs.25,000/- per bigha as net profit, has virtually gone unchallenged. In light of this evidence led by the claimants, the question whether the Reference Court was justified in placing reliance on the previous award for the purpose of ascertaining the market value of the lands acquired in the present case, has to be considered. The previous award rendered by the Reference Court in Land Acquisition Reference No.440 of 1990 is produced on the record at Exh.19. It indicates that the lands of village Mankva were acquired for Ahmedabad-Vadodara Express Way, and notification under Section 4 of the Act was published on August 14, 1986. Exh.19 makes it clear that the Reference Court had determined the market value of the agricultural lands situated at village Mankva at the rate of Rs.1500 per Are as on the date of notification under Section 4(1) of the Act, i.e. August 14, 1986. It is relevant to notice that the award rendered by the Reference Court in Land Acquisition Reference No.440 of 1990, was challenged before the High Court in First Appeal No.3048 of 1997. The fact that the award rendered by the Reference Court was upheld by the High Court and the First Appeal was dismissed, is not disputed. Thus, the previous award rendered by the Reference Court in Land Acquisition Reference No.440 of 1990 has become final between the parties. It is well settled that previous award rendered by the Reference Court or High Court in respect of similar or adjacent lands and which has become final, can be taken into consideration for the

purpose of ascertaining the market value of the lands acquired subsequently. However, the only safeguard, which is required to be borne in mind by the Court, is that situation and potentiality of the lands situated in two different villages should be the same. The witness for the claimants had asserted that fertility of the lands acquired in the present case was high. It was not brought on record of the case that fertility of the lands acquired in the present case was inferior in any manner to the lands which were subject matter of acquisition in Land Acquisition Reference No.440 of 1998. It is true that some more facilities were available in village Mankva. But, from that, one cannot come to the conclusion that either situation and/or potentiality of the lands acquired in the present case is not the same as that of the lands situated in village Mankva. In our view, the Reference Court was not justified at all in making deduction of 10% from the determination of market value of the lands situated at village Mankva while ascertaining the market value of the lands acquired in the present case on the ground that the population was less or that there was no canal. However, when the claimants have not filed either cross appeals or cross objections, it is not necessary for us to decide the question as to whether the Reference Court was justified in deducting 10% from the market value of the lands ascertained in Exh.19. Suffice it to say that the appellants have failed to establish that the impugned award is either excessive or exorbitant in any manner, whatsoever, so as to warrant interference by the Court in the present appeals. In absence of any evidence regarding sale of the acquired lands or sale of adjacent lands or yield, it cannot be said that any error was committed by the Reference Court in placing reliance on the previous award for the purpose of ascertaining the market value of the lands acquired in the present case. On over all view of the matter, we are of the opinion that just and proper award has been passed and, therefore, the appeals will have to be dismissed.

8. For the foregoing reasons, all these appeals fail and they are dismissed with no order as to costs.

(swamy)